

R E M A R K S

A. INTRODUCTION

Claims 60 and 73-121 are pending.

Claims 60, 73-81, 88, 90, 96-103, 105, 111, and 115-121 are rejected.

B. SECTION 102(B) REJECTION

Claims 60, 88, 90, 96-101, 105, and 111 stand rejected under 35 U.S.C. 102(b) as being anticipated by Spivak (“Instant Money,” *Wall Street Journal*). We respectfully traverse the Examiner’s Section 102(b) rejection.

Spivak does not teach or suggest all of the features of any of Claims 60, 88, 90, 96-101, 105, and 111.

1. Independent Claims 60 and 96

With respect to independent Claims 60 and 96, Spivak does not teach or suggest obtaining an indication from a credit provider of a line of credit that has been established for a customer who is expected to arrive at a particular location, then offering the credit line to the customer while the customer is at the particular location, and activating the credit line as part of a chargeable event at said location.

In particular, Spivak describes mailing unsolicited credit cards to recipients (presumably, to the recipient’s home) and explaining that they have credit good at indicated stores. But Spivak does not suggest activating the credit line as part of a chargeable event at the location to which the credit card is mailed.

Conversely, Spivak describes that the credit card may be used at various locations, but it does not suggest that a customer is expected to arrive at any of the various locations. Also, as the credit card is mailed to the recipient, Spivak does not suggest that the credit line is then offered at any of the various locations at which a chargeable event might take place.

Spivak does not teach or suggest all of the features of independent Claims 60 or 96 (or dependent Claims 97-101, 105, and 111). Accordingly, we request reconsideration of the Section 102(b) rejections of Claims 60, 96-101, 105, and 111.

2. Claims 88 and 90

Each of Claims 88 and 90 depends from Claim 73. In the obviousness rejection of Claim 73, the Examiner admits that Spivak does not teach “activating the card at the predetermined location.” As, the Examiner admits that Spivak does not anticipate Claim 73, Spivak cannot anticipate dependent Claim 88 or 90.

We request reconsideration and withdrawal of the anticipation rejection of Claims 88 and 90.

C. SECTION 102(A) REJECTION

Claim 60 stands rejected under 35 U.S.C. 102(a) as being anticipated by Sample Contract (<http://contracts.onecle.com/alliance-data/bath.svc.2002.08.29.shtml>). We respectfully traverse the Examiner's Section 102(a) rejection.

There is no evidence that the cited reference is a proper Section 102(a) reference. To the contrary, there are several indications that the reference was not published until after the effective filing date of this application. First, the copyright marking on the last page of the reference is for 2006. Also, the address of the reference includes what appears to be a date of August 29, 2002.

The Examiner also appears to recognize that Sample Contract is not a proper Section 102(a) reference and attempts to rely only on personal knowledge in rejecting Claim 60: "The Examiner takes official notice that the teaching relied upon in the cited reference was known at least one year prior to the effective filing date of this application." Thus, the Examiner even attempts to establish that Claim 60 is rejected by Section 102(b) prior art.

To the extent the Examiner is relying upon personal knowledge and using only so-called "official notice" as the basis for an anticipation rejection, we traverse. There is no substantial evidence of record of what was known as of the effective filing date of this application that could possibly support the Examiner's assertion, or could possibly support any prima facie case of anticipation.

We also request that if the Examiner is relying on personal knowledge in rejecting Claim 60, that the Examiner provide an affidavit describing exactly what the Examiner has personal knowledge.

We note that the Examiner has previously asserted and withdrawn an anticipation rejection of Claim 60 in light of only "official notice," and regret that the Examiner has chosen to do so again at this later date.

Further, even if what the Examiner asserts was known at the time of invention, it would not teach or suggest all of the features of Claim 60. For instance, according to the Examiner, the customer is offered a credit line and then an indication is obtained from a credit provider of a line of credit. In contrast, Claim 60 provides for obtaining the indication and then offering the credit line.

We submit that the Examiner has not established a prima facie case of anticipation of Claim 60 in light of the Examiner's personal experience.

D. SECTION 103(A) REJECTIONS

Claims 73-81, 101, and 103 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Spivak, and further in view of subject matter that the Examiner does not support with any tangible evidence of record, much less substantial evidence

We respectfully traverse the Examiner's Section 103(a) rejection. As discussed above with respect to Claim 60, Spivak does not teach or suggest the recited combination of obtaining an indication of a line of credit that has been established, offering to activate the line of credit at a predetermined location, and also activating the line of credit at the same location. Specifically, to the extent that the Examiner believes where a recipient receives an unsolicited credit card is a predetermined location, nothing in Spivak suggests offering to activate or activating the credit line at a recipient's mailing address.

We request reconsideration and withdrawal of the Examiner's Section 103(a) rejection of Claims 73-81, 101, and 103.

In addition, the Examiner does not support any of the asserted subject matter that the Examiner admits is not taught by Spivak. Accordingly, there is no substantial evidence supporting a prima facie case of obviousness. Again, for any subject matter for which the Examiner takes "official notice," we traverse the unsupported assertions and request a reference in support of such assertions or an affidavit explaining the scope of the subject matter of which the Examiner has personal knowledge.

E. SECTION 103(A) REJECTIONS

Claims 115-121 stand rejected as obvious over the Examiner's personal knowledge on which the anticipation rejection of Claim 60 is based. As discussed above, the cited Sample Contract is not prior art. To the extent the Examiner is relying on personal knowledge that all of the respective combinations of features of Claims 115-121 were known at the time of invention, we traverse and request an affidavit attesting to what exactly the Examiner has personal knowledge of.

We request reconsideration and withdrawal of the Section 103(a) rejection of Claims 115-121.

F. ADDITIONAL COMMENTS

Our silence with respect to the Examiner's other various assertions not explicitly addressed in this paper, including assertions of what the cited reference(s) teach or suggest, or the Examiner's interpretation of claimed subject matter, is not to be understood as agreement with the Examiner. As the Examiner

has not established an un rebuttable prima facie case of obviousness for any of the pending claims, for the reasons stated in this paper, we need not address the Examiner's other assertions at this time.

G. PETITION FOR EXTENSION OF TIME TO RESPOND & AUTHORIZATION TO CHARGE APPROPRIATE FEES

We understand that a one-month extension of time to respond to the Office Action is necessary. Please grant a petition for any extension of time required to make this Response timely.

Charge: \$120.00

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Please charge any appropriate fees set forth in §§ 1.16 – 1.18 for this paper and for any accompanying papers to Deposit Account 50-0271. Please credit any overpayment to the same account.

H. CONCLUSION

It is submitted that all of the claims are in condition for allowance. The Examiner's early re-examination and reconsideration are respectfully requested.

If the Examiner has any questions regarding this amendment or the present application, the Examiner is cordially requested to contact Michael Downs at telephone number (203) 461-7292 or via electronic mail at mdowns@walkerdigital.com.

Respectfully submitted,

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Date

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